



## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this "Agreement") by and between \_\_\_\_\_ ("Covered Entity") and Kettering Health Physician Partners, LLC ("Business Associate"), is entered into on \_\_\_\_\_, 202\_ ("Effective Date"), for the purposes of complying with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("HIPAA") and the security provisions of the American Recovery and Reinvestment Act of 2009, also known as the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act").

### **WITNESSETH:**

WHEREAS, Covered Entity is a covered entity as such term is defined under HIPAA and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information; and

WHEREAS, Business Associate has entered into a Clinical Integration Physician Participation Agreement with Covered Entity (the "Participation Agreement"), pursuant to which Business Associate will render services to, for, or on behalf of Covered Entity; and

WHEREAS, by providing services pursuant to the Participation Agreement, Business Associate shall become a business associate of Covered Entity, as such term is defined under HIPAA, and will therefore have obligations regarding the confidentiality and privacy of Protected Health Information that Business Associate creates for, or receives from or on behalf of, Covered Entity.

NOW THEREFORE, in consideration of the mutual covenants, promises, and agreements contained herein, the parties hereto agree as follows:

- I. **DEFINITIONS.** For the purposes of this Agreement, capitalized terms shall have the meanings ascribed to them below. All capitalized terms used but not otherwise defined herein will have the meaning ascribed to them by HIPAA.
  - a. "Protected Health Information" or "PHI" is any information, whether oral or recorded in any form or medium that is created or received by Business Associate, from or on behalf of Covered Entity, that identifies an individual or might reasonably be used to identify an individual and relates to: (i) the individual's past, present or future physical or mental health; (ii) the provision of health care to the individual; or (iii) the past, present or future payment for health care.
  - b. "Secretary" shall refer to the Secretary of the U.S. Department of Health and Human Services.
  - c. "Unsecured PHI" shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or

methodology specified by the Secretary (e.g., encryption). This definition applies to both hard copy PHI and electronic PHI.

## II. OBLIGATIONS OF BUSINESS ASSOCIATE.

### a. Confidentiality.

- i. Business Associate warrants that it, its agents and its subcontractors: (a) shall use or disclose PHI only in connection with fulfilling its duties and obligations under this Agreement and the Participation Agreement; (b) shall not use or disclose PHI other than as permitted or required by this Agreement or required by law; (c) shall not use or disclose PHI in any manner that violates applicable federal and state laws or would violate such laws if used or disclosed in such manner by Covered Entity; and (d) shall only use and disclose the minimum necessary Protected Health Information for its specific purposes.
- ii. Subject to the restrictions set forth in the previous paragraph and throughout this Agreement, Business Associate may use the information received from Covered Entity if necessary for (a) the proper management and administration of Business Associate; or (b) to carry out the legal responsibilities of Business Associate.
- iii. Subject to the restrictions set forth in Section II(a)(i) and throughout this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that:
  1. Disclosures are required by law, or
  2. Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity, and the person or entity notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- iv. Business Associate acknowledges that, as between Business Associate and Covered Entity, all PHI shall be and remain the sole property of Covered Entity, including any and all forms thereof developed by Business Associate in the course of its fulfillment of its obligations pursuant to the Agreement and Participation Agreement.
- v. Business Associate further represents that, to the extent Business Associate requests that Covered Entity disclose PHI to Business Associate, such request is only for the minimum necessary PHI for the accomplishment of the Business Associate's purpose.

- vi. To the extent that Business Associate is to carry out any of Covered Entity's obligations that are regulated by HIPAA, Business Associate shall comply with the HIPAA requirements that apply to the Covered Entity in the performance of such obligation.
- b. Safeguards. Business Associate shall employ appropriate administrative, technical and physical safeguards, consistent with the size and complexity of Business Associate's operations, to protect the confidentiality of PHI and to prevent the use or disclosure of PHI in any manner inconsistent with the terms of this Agreement.
- c. Availability of Books and Records. Business Associate shall permit the Secretary and other regulatory and accreditation authorities to audit Business Associate's internal practices, books and records at reasonable times as they pertain to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity in order to ensure that Covered Entity or Business Associate is in compliance with the requirements of the Privacy Rule.
- d. Individuals' Rights to their PHI.
  - i. In order to allow Covered Entity to respond to a request by an Individual for access to PHI pursuant to 45 CFR Section 164.524, Business Associate, within ten (10) business days of a written request by Covered Entity for access to PHI about an Individual contained in a Designated Record Set, shall make available to Covered Entity such PHI for so long as such information is maintained in the Designated Record Set.
    - 1. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days. Before forwarding any PHI to Covered Entity, Business Associate shall indicate in the Designated Record Set, any material it deems unavailable to the Individual pursuant to 45 CFR Section 164.524.
    - 2. Any denial of access to PHI determined by Covered Entity pursuant to 45 CFR Section 164.524, and conveyed to Business Associate by Covered Entity, shall be the responsibility of Covered Entity, including resolution or reporting of all appeals and/or complaints arising from denials.
  - ii. In order to allow Covered Entity to respond to a request by an Individual for an amendment to PHI, Business Associate shall, within ten (10) business days of a written request by Covered Entity, make available to Covered Entity such PHI for so long as such information is maintained in a Designated Record Set.
    - 1. In the event that any Individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days. Before forwarding any PHI to Covered Entity, Business Associate shall indicate in the Designated Record Set, any

material it deems unavailable to the Individual pursuant to 45 CFR Section 164.526.

2. Any denial of amendment to PHI determined by Covered Entity pursuant to 45 CFR Section 164.526, and conveyed to Business Associate by Covered Entity, shall be the responsibility of Covered Entity, including resolution or reporting of all appeals and/or complaints arising from denials.
  3. Within ten (10) business days of receipt of a request from Covered Entity to amend an individual's PHI in the Designated Record Set, Business Associate shall incorporate any approved amendments, statements of disagreement, and/or rebuttals into its Designated Record Set as required by 45 CFR Section 164.526.
- iii. In order to allow Covered Entity to respond to a request by an Individual for an accounting pursuant to 45 CFR Section 164.528, Business Associate shall, within ten (10) business days of a written request by Covered Entity for an accounting of disclosures of PHI about an Individual, make available to Covered Entity such PHI. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure.
1. In the event that any Individual requests an accounting of disclosures of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days.
  2. Business Associate shall implement an appropriate record keeping process to enable it to comply with the requirements of this Agreement.
- e. Disclosure to Third Parties. Business Associate shall obtain and maintain a written agreement with each subcontractor or agent that has or will have access to PHI, which is received from, or created or received by, Business Associate for or on behalf of Covered Entity, pursuant to which agreement such subcontractor and agent agrees to be bound by the same restrictions, terms, and conditions that apply to Business Associate pursuant to the Agreement with respect to such PHI.
- f. Reporting Obligations.
- i. In the event of a Breach of any Unsecured PHI that Business Associate accesses, maintains, retains, modifies, records, or otherwise holds or uses on behalf of Covered Entity, Business Associate shall report such Breach to Covered Entity as soon as practicable, but in no event later than ten (10) business days after the date the Breach is discovered. Notice of a Breach shall include: (i) the identification of each individual

whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) the date of the Breach, if known, and the date of discovery of the Breach; (iii) the scope of the Breach; and (iv) the Business Associate's response to the Breach. In the event of a Breach, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable, any harmful effect of such Breach known to Business Associate.

- ii. In the event of a use or disclosure of PHI that is improper under this Agreement but does not constitute a Breach, Business Associate shall report such use or disclosure to Covered Entity within ten (10) business days after the date on which Business Associate becomes aware of such use or disclosure.
- iii. In the event of any successful Security Incident, Business Associate shall report such Security Incident in writing to Covered Entity within ten (10) business days of the date on which Business Associate becomes aware of such Security Incident.

### III. OBLIGATIONS OF COVERED ENTITY.

#### a. Permissible Requests.

- i. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would violate applicable federal and state laws if such use or disclosure were made by Covered Entity.
- ii. Covered Entity may request Business Associate to disclose PHI directly to another party only for the purposes allowed by HIPAA and the HITECH Act.

#### b. Notifications.

- i. Covered Entity shall notify Business Associate of any limitation in any applicable notice of privacy practices in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- iii. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

### IV. TERM AND TERMINATION.

- a. General Term and Termination. This Agreement shall become effective on the Effective Date set forth above and shall terminate upon the termination or expiration of the Participation Agreement and when all PHI provided by either party to the other, or created or received by Business Associate on behalf of Covered Entity is, in accordance with this Section, destroyed or returned to Covered Entity or, if Business Associate determines that it is not feasible to return or destroy PHI, protections are extended to such information, in accordance with the terms of this Agreement.
  
- b. Material Breach.
  - i. Where either party has knowledge of a material breach by the other party and cure is possible, the non-breaching party shall provide the breaching party with an opportunity to cure. Where said breach is not cured within ten (10) business days of the breaching party's receipt of notice from the non-breaching party of said breach, the non-breaching party shall, if feasible, terminate this Agreement and the portion(s) of the Participation Agreement affected by the breach.
  
  - ii. Where either party has knowledge of a material breach by the other party and cure is not possible, the non-breaching party shall, if feasible, terminate this Agreement and the portion(s) of the Participation Agreement affected by the breach.
  
- c. Return or Destruction of PHI. Upon termination of this Agreement for any reason, Business Associate shall:
  - i. If feasible as determined by Business Associate, return or destroy all PHI received from, or created or received by Business Associate for or on behalf of Covered Entity that Business Associate or any of its subcontractors and agents still maintain in any form, and Business Associate shall retain no copies of such information; or
  
  - ii. If Business Associate determines that such return or destruction is not feasible, extend the protections of this Agreement to such information and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, in which case Business Associate's obligations under this Section shall survive the termination of this Agreement.

V. MISCELLANEOUS.

- a. Amendment. If any of the regulations promulgated under HIPAA or the HITECH Act are amended or interpreted in a manner that renders this Agreement inconsistent therewith, the parties shall amend this Agreement to the extent necessary to comply with such amendments or interpretations.
  
- b. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with HIPAA and the HITECH Act.

- c. Conflicting Terms. In the event that any terms of this Agreement conflict with any terms of the Participation Agreement, the terms of this Agreement shall govern and control.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement on behalf of the party and on the date set forth below.

COVERED ENTITY:	BUSINESS ASSOCIATE:
_____	Kettering Health Physician Partners, LLC
By: _____	By: <u>MB</u>
Print: _____	Print: <u>Terry Burns</u>
Title: _____	Title: <u>Exec Director KPP</u>
Date: _____	Date: <u>March 14, 2022</u>